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In re Application of	:	
FULLER, John	:	
Application No.: 10/566,114	:	
PCT No.: PCT/GB04/02500	:	
Int. Filing Date: 15 June 2004	:	DECISION
Priority Date: 25 July 2003	:	
Attorney's Docket No.: 7101P006	:	
For: Hydraulic Variator Control Arrangement	:	

This communication is issued in response to applicants' "Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action," filed 16 May 2007. Applicants' submission has been treated as a petition under 37 CFR 1.181 requesting that the Notification of Abandonment (Form PCT/DO/EO/909), mailed 12 March 2007, be withdrawn.

BACKGROUND

On 15 June 2004, applicant filed international application PCT/GB04/02500, claiming a priority date of 25 July 2003. The thirty-month period for paying the basic national fee in the United States expired at midnight on 25 January 2006.

On 24 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied, *inter alia*, by the requisite basic national fee.

On 13 June 2006, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that the declaration of the inventors filed 13 January 2006 was not in compliance with 37 CFR 1.497(a)-(b) because it was not properly executed.

On 12 March 2007, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the instant application is abandoned for failure to respond to the Notification of Missing Requirements mailed 13 June 2006.

On 16 May 2007, applicant submitted the instant "Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action," including a declaration executed by the inventor and the surcharge for late filing of the declaration. Applicant explained that the Notification of Missing Requirements (Form PCT/DO/EO/905) mailed on 13 June 2006 was never received and requests that the Notification of Abandonment be rescinded.

DISCUSSION

Applicant states in the instant petition that after "a diligent search of the file jacket and docketing systems" applicant has determined that, "there is no record of receiving any other papers from the U.S. Patent Office subsequent to the return receipt postcard. Applicant requests that because he "did not receive the pertinent Notification of Missing Requirements," the Notice of Abandonment, mailed 12 March 2007, should be rescinded.

Under MPEP §711.03(c)(I)(A), a proper showing in order to establish that papers were not received must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement by the practitioner attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed (the docket record must also be referenced in practitioner's statement).

With regard to items (1) and (2), applicant has submitted the required statements. Hence, items (1) and (2) have been satisfied.

With regard to item (3), applicants have provided a copy of the docket record which purportedly shows where the paper would have been entered had it been received. However, the printout of the docket report for this specific application is not sufficient to establish that the Notification of Missing Requirements (Form PCT/DO/EO/905) was not received and misdocketed to another application. As documentary proof of non-receipt of the Office action, "if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted." MPEP §711.03(c)(I)(A). Accordingly, applicants are required to provide a docket record listing all replies due on 13 August 2006.

Thus, applicants have not provided the proper showing necessary to rescind the Notification of Abandonment (Form PCT/DO/EO/909), mailed 12 March 2007, and the petition may not be properly granted.

CONCLUSION

For the reasons stated above, the petition under 37 C.F.R. 1.181 is **DISMISSED** without prejudice.

U.S. national stage application number 10/566,144 remains **ABANDONED**.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.

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